

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Valentina Concha-Toro	Team: Squad #15	CCRB Case #: 202000818	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Thursday, 01/30/2020 11:15 AM	Location of Incident: 8th Avenue between West 42nd Street and West 43rd Street	Precinct: 14	18 Mo. SOL 7/30/2021	EO SOL 3/16/2022	
Date/Time CV Reported Thu, 01/30/2020 5:11 PM	CV Reported At: CCRB	How CV Reported: On-line website	Date/Time Received at CCRB Thu, 01/30/2020 5:11 PM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Frank Menna	13911	952006	MTS PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Frank Menna	Force: Police Officer Frank Menna used physical force against § 87(2)(b)	
B.POM Frank Menna	Discourtesy: Police Officer Frank Menna spoke discourteously to § 87(2)(b)	

Case Summary

On January 30, 2020, § 87(2)(b) submitted this complaint with the CCRB.

At approximately 11:15 a.m. on January 30, 2020, in the vicinity of 8th Avenue and West 42nd Street, Manhattan, § 87(2)(b) was biking northbound on 8th Avenue. § 87(2)(b) was riding in the left most lane of traffic, next to the bicycle lane but no in it. § 87(2)(b) crossed West 42nd Street as the light was turning red. PO Frank Menna of the 14th Precinct was standing in the second lane of traffic on 8th Avenue. PO Menna told § 87(2)(b) to stop and § 87(2)(b) began slowing down. PO Menna grabbed § 87(2)(b)'s right shoulder and § 87(2)(b) fell off his bicycle (**Allegation A: Force, § 87(2)(g)**). PO Menna asked § 87(2)(b) for his ID. PO Menna told § 87(2)(b) "Clear your shit and get out of the bike lane" (**Allegation B: Discourtesy, § 87(2)(g)**). § 87(2)(b) was issued three summonses.

One BWC video was obtained from IAB (Board Review 01).

Findings and Recommendations

Allegation (A) Force: Police Officer Frank Menna used physical force against § 87(2)(b)

It is undisputed that § 87(2)(b) was riding a bicycle northbound in a vehicle traffic lane and PO Menna was standing in a traffic lane facing south on 8th Avenue. § 87(2)(b) crossed the intersection of 8th Avenue and West 42nd Street. PO Menna and § 87(2)(b) made physical contact and § 87(2)(b) fell off the bicycle. PO Menna issued § 87(2)(b) summonses for running a red light, not riding in the bicycle lane, and for failing to comply with a police order (Board Review 02). § 87(2)(b) was not injured.

§ 87(2)(b) stated (Board Review 03) that he was working and riding a company bicycle. He saw PO Menna raise his arms and heard his instructions to stop. § 87(2)(b) turned toward the bicycle lane and applied the brakes to stop. Because it was a company bicycle, the brakes did not function as well as his personal bicycle. PO Menna grabbed onto the clothes on § 87(2)(b)'s right shoulder area with both of his hands. § 87(2)(b) felt a push from PO Menna's hands, but § 87(2)(b) did not know if the sensation of the push was caused by his own forward momentum. He and the bicycle fell to the left. The handlebar of the bicycle hit the top of § 87(2)(b)'s left knee which resulted in a bruise. He did not recall whether he landed on the ground.

PO Menna stated (Board Review 04) that he observed § 87(2)(b) not riding in the bicycle lane and run a red light at 8th Avenue and West 42nd Street. PO Menna raised his hands to shoulder level and told § 87(2)(b) to stop. PO Menna's intention was to issue § 87(2)(b) summonses for the VTL infractions. PO Menna did not recall whether § 87(2)(b) sped up or slowed down. § 87(2)(b) moved PO Menna's right side. PO Menna believed that § 87(2)(b) moved to avoid PO Menna and continue on 8th Avenue. § 87(2)(b)'s bicycle hit PO Menna on his right side, and § 87(2)(b)'s bicycle fell. PO Menna did not recall specifically what parts of his body made contact with § 87(2)(b) or § 87(2)(b)'s bicycle. PO Menna did not recall closing his fist around § 87(2)(b)'s clothing. PO Menna did not recall pushing § 87(2)(b).

Starting at 00:58 minutes into PO Menna's BWC video (Board Review 01), § 87(2)(b) is on his bicycle and turns so he is on PO Menna's right side. § 87(2)(b) slows down as he approaches PO Menna. PO Menna raises both hand and extends them toward § 87(2)(b) as he arrives at PO Menna's right side. Both of PO Menna's hands make contact with § 87(2)(b)'s right shoulder. § 87(2)(b)'s bicycle falls into the bicycle lane and § 87(2)(b) stumbles off the bicycle across the bicycle

lane, but he does not fall on the ground.

While PO Menna was not able to provide any additional details regarding the physical contact between himself and § 87(2)(b) § 87(2)(g)

The video captured § 87(2)(b) falling off his bicycle after PO Menna made contact with him, and § 87(2)(b) moving across the bicycle lane perpendicular to the direction he had been traveling.

According to NYPD Patrol Guide, Section 221-01 and 221-02 (Board Review 05), an officer may use force when it is reasonable to place a person in custody or to prevent escape from custody. The following should be considered when determining whether the use of force is reasonable: the nature and severity of the crime, actions taken by the subject, immediacy of the perceived threat or harm to the subject, members of the service, and/or bystanders, and whether the subject is attempting to evade arrest by flight.

§ 87(2)(g)

Allegation (B) Discourtesy: Police Officer Frank Menna spoke discourteously to § 87(2)(b)

During § 87(2)(b)'s statement (Board Review 03) he did not allege that PO Menna used any profane language during their interaction. But upon review of PO Menna's BWC (Board Review), at 1:40 minutes into the video, PO Menna tells § 87(2)(b) "Clean your shit and get out the bike lane."

PO Menna stated (Board Review 04) initially that he did not recall using any profanity while speaking to § 87(2)(b). PO Menna did not recall using the word "shit" while speaking to § 87(2)(b). Upon being presented his BWC video PO Menna identified his voice as the one speaking to § 87(2)(b). PO Menna acknowledged that he used the word "shit" but he did not have a reason as to why he used profane language while instructing § 87(2)(b) to move his belongings.

According to NYPD Patrol Guide, Section 200-02 (Board Review 06), the mission and value of the department is to maintain a higher standard of integrity than is generally expected of others because so much is expected of us. The NYPD is committed to accomplishing its mission of protecting the lives and property of all citizens of New York City by treating every citizen with compassion, courtesy, professionalism, and respect.

PO Menna acknowledged that he used profane language while speaking to § 87(2)(b) and he did not provide a specific justification for the use of the word “shit” while instructing § 87(2)(b) to move his belongings. § 87(2)(g)

Civilian and Officer CCRB Histories

- This is the first CCRB complaint to which § 87(2)(b) has been a party (Board Review 07).
- PO Menna has been a member-of-service for 14 years and this is the first CCRB complaint to which he has been a subject.

Mediation, Civil and Criminal Histories

- § 87(2)(b) declined to mediate this complaint.
- According to the Office of Court Administration (OCA), § 87(2)(b) has no history of convictions in New York City (Board Review 08).
- As of February 14, 2020, the New York City Office of the Comptroller has no record of a Notice of Claim being filed in regards this to complaint (Board Review 09).

Squad No. 15

Investigator:	<u>Valentina Concha-Toro</u>	<u>Inv. Valentina Concha-Toro</u>	<u>February 19, 2021</u>
	Signature	Print Title & Name	Date

Squad Leader:	<u>Simon Wang</u>	<u>IM Simon Wang</u>	<u>05/06/21</u>
	Signature	Print Title & Name	Date

Reviewer:	_____	_____	_____
	Signature	Print Title & Name	Date